

A RESOLUTION

BY PUBLIC SAFETY & LEGAL ADMINISTRATION COMMITTEE

01- R -0699

**A RESOLUTION AUTHORIZING THE
SETTLEMENT OF THE CLAIM OF SYBIL
GALLIER IN THE AMOUNT OF \$11,500.00
AGAINST THE CITY OF ATLANTA**

WHEREAS, SYBIL GALLIER has filed a claim against the City of Atlanta seeking damages for bodily injuries as a result of a fall that occurred when she stepped into a depression or hole that was left in an unsafe condition by city workers; and

WHEREAS, the Water Department failed to properly raise a water valve in the crosswalk located at the intersection of Harris Street, NE & Peachtree Street, NE after the road had been repaved; and

WHEREAS, the defect had existed over time such that the City of Atlanta was on constructive notice of said nuisance, however, the City failed to abate same; and

WHEREAS, the Department of Water performs ministerial functions and the construction and maintenance of public roads is a ministerial function, therefore, this claim is not subject to a defense of sovereign immunity under the laws of the State of Georgia; and

WHEREAS, the claimant has asserted damages in the amount of \$50,000.00 and has agreed to accept the sum of \$11,500.00 in full and complete satisfaction and settlement of her claim against the City of Atlanta; and

WHEREAS, the City Attorney has recommended that the claim of SYBIL GALLIER, be settled for the sum of \$11,500.00.

THEREFORE, BE IT RESOLVED that the Council of the City of Atlanta, Georgia that \$11,500.00 be paid by the City of Atlanta to SYBIL GALLIER, in satisfaction of any and all claims she may have stemming from bodily injuries sustained by her on or about May 25, 1999, at the intersection of Harris Street, NE & Peachtree Street, NE, and that the City Attorney prepare appropriate releases.

BE IT FURTHER RESOLVED that the Chief Financial Officer is hereby authorized to pay the above mentioned sum from account number 2J01/529017/T31001.

DEPARTMENT OF LAW - CLAIM INVESTIGATION SUMMARY

Claim No. 01L0011

Date: May 3, 2001

Claimant /Victim SYBIL GALLIER
BY: (Atty) (Ins. Co.) _____
Address: 114 South Lake Drive, Lynchburg, VA 24502
Subrogation: Claim for Property damage \$ Bodily Injury \$ 50,000.00
Date of Notice: 10/1/99 Method: Written, Proper X Improper _____
Conforms to Notice: O.C.G.A. §36-33-5 X Ante Litem (6 Mo.) X
Date of Occurrence 5/25/99 Place: Harris Street, NE & Peachtree Street, NE
Department WATER Division _____
Employee involved _____ Disciplinary Action: _____

NATURE OF CLAIM: Claimant sustained bodily injuries when she stepped in an improperly raised water valve that was located in the crosswalk at the above location. An investigation determined that the defective condition was created after a road paving project in June 1996 and had existed for some time prior to claimant's injury. Yet, the City failed to correct it.

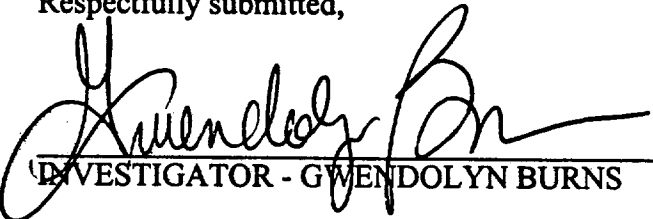
INVESTIGATION:

Statements: City employee X Claimant _____ Others _____ Written _____ Oral X
Pictures _____ Diagrams _____ Reports: Police _____ Dept Report _____ Other _____
Traffic citations issued: City Driver _____ Claimant Driver _____
Citation disposition: City Driver _____ Claimant Driver _____

BASIS OF RECOMMENDATION:

Function: Governmental _____ Ministerial X
Improper Notice _____ More than Six Months _____ Other _____ Damages reasonable _____
City not involved _____ Offer rejected _____ Compromise settlement X
Repair/replacement by Ins. Co. _____ Repair/replacement by City Forces _____
Claimant Negligent _____ City Negligent X Joint _____ Claim Abandoned _____

Respectfully submitted,


INVESTIGATOR - GWENDOLYN BURNS

RECOMMENDATION:

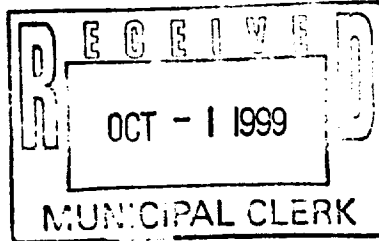
Pay \$ 11,500.00 Adverse _____ Account charged: 1A01 _____ 2J01 X 2H01 _____
Claims Manager: _____ Concur/date _____
Committee Action: _____ Council Action _____

114 South Lake Drive
Lynchburg, VA 24502
September 24, 1999
(804) 525-5761 (H)
(804) 384-3131 X130 (W)

Council of the City of Atlanta
Municipal Clerk
City Hall
55 Trinity Avenue, S. W.
Atlanta, GA 30335

Re: CLAIM FOR INJURY

Dear Madam/Sir:



10-01-99P05:43

ENTERED - 10-8-99 - SB
99L0648 - GWEN BURNS

Since our marriage in 1993, we have talked about all of the places we have toured and traveled in and around, and even though we both had been through Atlanta numerous times, neither of us had ever explored the downtown area. We decided to exchange a time-share week and go to Big Canoe at Marble Hill, so we could explore Atlanta.

We arrived on Saturday, May 22, and decided to go into Atlanta on Tuesday, May 25. We parked in the Underground Parking Garage and spent the day exploring there, the Coca-Cola Museum, ate lunch at Johnny Rockets, toured the Capitol, and had walked up Peachtree Street to Hard Rock Café, shopped in Macy's, and were on our way to CNN and Centennial Park. It was about 5:40 p.m. and as we got to Harris Street, the 'little man' showed walking (in the crosswalk), so we started across. We were paying attention to traffic because people were leaving work, so traffic was very heavy.

We had almost reached the far side when I suddenly twisted my left ankle. Of course, I was trying to keep from falling, but in the process, I fell sprawling to my right. Not only did I skin my right knee (on the inside), right elbow, and left palm, but I hit my right hip, shoulder, and side of my head on the pavement. My husband was a couple of steps in front of me and only when he heard a noise behind him as he reached the other side (and we were going to walk down Harris Street) did he realize that I was not behind him. Immediately, 2 orthopedic nurses leaving a seminar were leaning over me to see how they might help, as was a worker on his way home on his bike. It took all four of them to lift me up slowly because I was in excruciating pain in so many places. They managed to get me to the sidewalk where I sat down on the walkway. The worker had a shirt and a jacket on his bike and he quickly elevated my left ankle. The nurses helped take off my shoe as it had already swollen to where it looked as though there was a soft ball attached to the outside of my ankle. One of the nurses expressed what a severe injury I had suffered because the blood inside had already reached my toes and my upper calf. I said that I needed some ice to help prohibit the swelling, so the man disappeared to somewhere and came back with a big bag of ice. Momentarily, a bike patrolman appeared. The patrolman talked with all of us about what had happened and we discussed the water meter hole where the cover was 4-5" below the surface of the pavement in the marked crosswalk that I had accidentally stepped in. He also called for an ambulance. After awhile my color was better so the nurses left. The patrolman and the man stayed until the ambulance arrived. The EMT's put my leg in a cardboard splint and subsequently took me to Crawford-Long Hospital. The doctor who saw me there expressed that it was the worst looking injury she had ever seen where no bones were broken (which 2 trips to x-ray confirmed). I had suffered torn, strained, sprained and stretched muscles, tendons, and ligaments from my toes to my hip. Subsequently nerves were also stretched and torn. She made a plaster cast down the back of leg and under my foot, and wrapped it with white batting and ace bandages, and wanted to keep me overnight, but since we were on vacation and I knew I would be sleeping for the next couple of days anyway, they gave me a walker and we returned to our villa. Her instructions were to see an orthopedic doctor at home, so my son got me an appointment for Tuesday, June 1st. This doctor did not realize the severity (grade 3 - the worst) of the injury even though I had had the x-rays sent from Crawford-Long for his review to avoid cost of making all new ones, he placed my leg in an ace bandage and air splint. When I realized in two weeks, the muscles, etc. were healing stretched, I went to another orthopedic on June 18th who immediately saw the problem and put me in a walking cast for three (3) weeks. I was extremely disappointed when the cast was removed to see this shriveled leg and foot with muscles of mush where once had been athletic muscle. I could barely stand up with my weight on my left leg without the assistance

BURNS
10/04/99
m

of a cane. He placed my leg back in the air splint until a re-visit on August 27. The nerve damage was persisting and loss of muscle still made the air splint necessary and made therapy a must.

As a walker and hiker I've had to remain mostly seated, and even with reduced food intake, I have managed to gain quite a few pounds because of being incapable of exercise. Nothing can bring back these months of time that have been lost due to being incapacitated. Even playing with my grand children has been limited.

Due to no fault of my own (other than walking on a walk signal in a crosswalk at Peachtree Street and Harris Street in downtown Atlanta), I have suffered immeasurable expense and suffering and will continue to for some time. The therapist has expressed that mine is the worst "sprained" ankle that she has ever seen. After four weeks of therapy, she has had therapy extended until it reaches 75%, the 25% disability to be very long term with continued exercises, etc. at home.

Please note the following: 1) Lost Wednesday - Saturday of our vacation that can't be replaced - can't get a week of time-share to replace it. We had planned on seeing CNN, Centennial Park, Stone Mountain, Lennox Square, eating at the Hard Rock Café, and The Abbey (to name a few). 2) Although my husband carried me to work the following Monday, May 31st, and I have been able to sit at my desk and work (accountant) and manage to get to the restroom 100' away, I have not been able to function at my work at 100% due to the limited mobility - the length of time to get from place to place. At the time I needed to be able to give 100%+ because of an upcoming new phone system installation AND computer conversion (both of which I am the System Administrator - which requires allot of interaction with a lot of people in a large working environment). 3) I have NOT had any other type of normal life (shopping, preparing meals, cleaning, yard work, laundry, church, etc. 4) Suffering back pain due to not being able to walk properly - the alignment of my back has changed due to the way I have to walk. 5) Have not been able to drive my car that has a straight shift because my left foot is needed for the clutch. Have had to drive another car that is an automatic that is not as economical on gas. 6) Long distance telephone calls to get medical needs taken care of. 7) For the first time in my working career I have more vacation time, and we are due to go for a week in October, but due to not being able to walk and be mobile, will not be able to sight see and explore as I am accustomed to doing. 8) At present, without the splint, my foot is still too large for my former shoes, so will have to have more than one pair of winter shoes. 9) Future unknown needs.

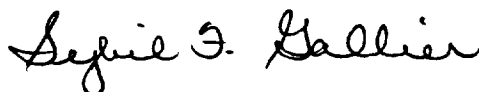
I think the City of Atlanta is responsible for:

- 1) Paying all my medical bills, to date and future.
- 2) An expense paid trip back to Atlanta for my husband and me to do all of the things we had planned to do and were not able to do - when I am able to walk and sight see.
- 3) Compensation for hours that it takes for doctor's visits and therapy, etc., plus mileage.
- 4) Paying for someone to come in and thoroughly clean my home and do the yard work that I have not been able to do.
- 5) Paying for a weigh loss program - but it must be non-physical.
- 6) Replace the pair of sunglasses that I was wearing that fell to the street and the lens were scratched to the point that they are not usable.
- 7) Supplies that were necessary for healing, mobility, and over the counter medication: 1) fitted ankle ace brace; 2) pair of shoes 2 sizes too big (for normal wear), for my swollen foot with air splint; 3) winter shoes one size too big so I can continue to wear air splint; 4) ibuprofen.
- 8) Compensation for 25% disability - long term recovery that will include home cleaning, yard work, doctor visits and therapy (charges, loss of time, mileage, etc.).
- 9) Phone bills to take care of medical needs.

Enclosed is a sheet with the breakdown for the above-mentioned items and one of your claim forms with information provided. I have delayed filing this due to the lack of full information for charges and the uncertainty of my term of disability. This is still not a complete package of copies, but felt I must not delay filing any longer.

Trusting to hear from you soon with favorable results.

Very truly yours,



Sybil F. Gallier

GENERAL RELEASE AND INDEMNIFICATION

CLAIM NUMBER 99L0648

\$ 11,500.00

IN CONSIDERATION of the sum of ELEVEN THOUSAND FIVE HUNDRED DOLLARS AND NO/100s DOLLARS, to be paid by the CITY OF ATLANTA, the future receipt of which is hereby acknowledged, I do hereby, for myself, my heirs, executors, administrators, and assigns, release and forever discharge said City, its officers and employees, from any and all claims, demands, actions, causes of action, suits, damages, loss and expenses, of whatsoever kind or nature for or on account of anything that has heretofore occurred, and particularly for or on account of a bodily injury incident which occurred on or about the 25th day of May, 1999, at or near 7 Harris Street, (Harris Street NE & Peachtree Street, NE).


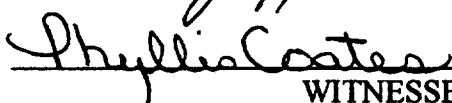
It is further understood and agreed that the payment of the above named sum is not to be considered as an admission on the part of the City, its officers, agents, servants or employees, of any liability whatsoever and the undersigned further covenants and agrees to indemnify and hold harmless the City of Atlanta, its officers, agents, servants and employees, from any and all claims, damages or costs which the said City of Atlanta, its officers, agents, servants and employees, may be called upon to make as a result of the event hereinbefore referred to.

And I now state that the only consideration for my signing this release and indemnification is the payment of the sum stated above; that no other promise or agreement of any kind or nature has been made to or with me by said City or its agents to cause me to sign this release, and that I fully understand the meaning and intent of this instrument.

WITNESS my hand and seal this 30th day of April, 2001.


SYBIL F. GALLIER

The above release was read and explained to, and signed by the said Sybil F. Gallier in our presence on the date above written.



WITNESSES